

REMARKS/ARGUMENTS

The Examiner is requiring restriction to one of the following Groups:

- Group I: Claims 1-4, drawn to an asporogenous *Brevibacillus choshinensis* (*Bacillus brevis*);
- Group II: Claims 5-12, drawn to an asporogenous *Brevibacillus choshinensis* (*Bacillus brevis*) lacking or having reduced protease activity;
- Group III: Claims 13-14 and 17-20, drawn to transformed asporogenous *Brevibacillus choshinensis* (*Bacillus brevis*) strains lacking or having reduced protease activity; and
- Group IV: Claims 15-16, drawn to a method of making a protein using a transformant asporogenous *Brevibacillus choshinensis* (*Bacillus brevis*) strains lacking or having reduced protease activity.

The Examiner alleges that the Groups do not relate to a single general inventive concept under PCT Rule 13.1 because the same or corresponding special technical feature is lacking between the groups under PCT Rule 13.2 for the following reasons:

“First, the inventions of groups I and III do not match a permitted category as PCT Rule 13.2 does not provide for multiple methods or products in one category. A variety of products are claimed having distinct properties. For example, groups I and II are drawn to include asporogenous *Brevibacillus choshinensis* (*Bacillus brevis*) having different properties, while Group III requires transformed strains of *Brevibacillus choshinensis* (*Bacillus brevis*) which have additional requirements for their functional intended use.

No common inventive concept is shared among groups I through IV, since a technical relationship is lacking among the claimed inventions involving one or more special technical features because asporogenous *Brevibacillus choshinensis* (*Bacillus brevis*) are known in the art. See, e.g., Modest *et al.*, Table 1, of record.”

However, PCT Rule 13.2 reads (in part):

“The expression "special technical features" shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.”

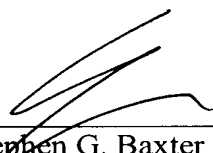
Applicants contend that the Examiner did not consider, as a whole, the contribution that the claimed products make over the prior art. Specifically, unlike the *Brevibacillus choshinens* of the present claims, the strain disclosed in Modest *et al.* produces spores under certain growth conditions (*see* abstract of reference: “these mutants formed normal spores after being transferred to nitrogen-free medium and upon the addition of tyrocidine.”). Secondly, while Modest *et al.* may refer to ATCC 8185 as *Bacillus brevis*, it is actually classified as *Brevibacillus parabrevis* (*see* attached ATCC Catalog Search). Therefore, Modest *et al.* does not disclose the bacterial strain of the present invention.

For the reasons presented above, Applicants submit that the Office has failed to meet the burden necessary in order to sustain the requirement for restriction. Applicants therefore request that the requirement for restriction be withdrawn.

Applicants respectfully submit that the above-identified application is now in condition for examination on the merits, and early notice thereof is earnestly solicited.

Respectfully Submitted,

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, P.C.



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#### Bacteria

<b>ATCC® Number:</b>	<b>8185™</b>	<div>Order this Item</div>	<b>Price:</b>	<b>\$185.00</b>
<b>Organism:</b>	<i>Brevibacillus parabrevis</i> deposited as <i>Bacillus brevis</i> Migula			
<b>Designations:</b>	NRS 751	<b>Isolation:</b>	soil	
<b>Depositor:</b>	NR Smith	<b>Shipped:</b>	freeze-dried	
<b><u>Biosafety Level:</u></b>	1			

**Growth Conditions:** ATCC medium 3: Nutrient agar or nutrient broth

**Temperature:** 30.0°C

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**Cross References:** Nucleotide (GenBank) : M10111 *B.brevis* 16S rRNA.  
Nucleotide (GenBank) : M19023 *B.brevis* ribonuclease P RNA gene.

Nucleotide (GenBank) : X13237 *Bacillus brevis* *tycA* gene for tyrocidine synthetase I.  
 Nucleotide (GenBank) : U09971 *Bacillus brevis* ATCC 8185 *Spo0A* (*spo0A*) gene, partial cds.  
 Nucleotide (GenBank) : M16442 *Bacillus brevis* *tycA* mRNA encoding tyrocidine synthetase, 5' end.  
 Nucleotide (GenBank) : AF004835 *Brevibacillus brevis* tyrocidine biosynthesis operon, tyrocidine synthetase 1 (*tycA*), tyrocidine synthetase 2 (*tycB*), tyrocidine synthetase 3 (*tycC*), putative ABC-transporter *TycD* (*tycD*), putative ABC-transporter *TycE* (*tycE*) and putative thio  
 produces gramicidin  
 produces tyrocidine  
 5741: J. Exp. Med. 73: 629, 1941.  
 5923: Smith NR, et al. Aerobic spore forming bacteria. U.S. Dep. Agric. Monogr. 16: 1-148, 1952.  
 6445: Smith NR, et al. Aerobic mesophilic spore-forming bacteria. U.S. Dep. Agric. Misc. Publ. 559: 41, 1946.  
 9331: Slapikoff S, et al. Sporulation in *Bacillus brevis*: studies on protease and protein turnover. J. Bacteriol. 106: 739-744, 1971. PubMed: 5557592

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